



Board of Appeals of Baltimore County

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April 23, 2020

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RE: In the Matter of: *M and S Limited Partnership – Legal Owner and Petitioner*
(fka Howard Bank)
Case No.: 19-070-SPHX

Dear Counsel:

Enclosed please find a copy of the final Majority Opinion and Order, and Dissent, issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rules 7-201 through Rule 7-210 of the *Maryland Rules*, with a **photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Multiple Original Cover Letters

c: See Distribution List Attached

In the Matter of: *M and S Limited Partnership – Legal Owner and Petitioner*
(*fka Howard Bank*)

2

Case No.: 19-070-SPHX

Distribution List

April 23, 2020

M and S Limited Partnership

Dale Cassidy, President/Ridgely Manor Community Association

Susan C. Bacon, Treasurer/Ridgely Manor Community Association

Janice Krach, President/Knettishall Community Association, Inc.

Bryan Fischer/Towson Communities Alliance

Peter M. Moulder, Vice President/Associates of Loch Raven Village

C. Pete Gutwald, Director/Department of Planning

Paul M. Mayhew, Managing Administrative Law Judge

Michael D. Mallinoff, Director/PAI

Nancy C. West, Assistant County Attorney/Office of Law

James R. Benjamin, Jr., County Attorney/Office of Law

IN THE MATTER OF M AND S LIMITED	*	BEFORE THE
PARTNERSHIP LEGAL OWNERS AND	*	BOARD OF APPEALS
PETITIONERS FOR SPECIAL HEARING AND	*	OF
SPECIAL EXCEPTION FOR THE PROPERTY	*	BALTIMORE COUNTY
LOCATED AT 1641 JOPPA ROAD	*	CASE NO.: 19-070-SPHX
(FORMERLY KNOWN AS HOWARD BANK)		
9 TH ELECTION DISTRICT		
5 TH COUNCILMANIC DISTRICT		

* * * * *

MAJORITY OPINION

This matter comes before the Board of Appeals for Baltimore County (the “Board”) as an appeal from Administrative Law Judge's November 15, 2018 decision which granted a Petition for Special Hearing, pursuant to Baltimore County Zoning Regulations (BCZR) §500.7 to approve an amendment to a site plan previously approved in Case 99-251-A, and granted a Petition for Special Exception, pursuant to BCZR §230.3, to permit an automotive service garage in a Business Local (BL) zone for a property located at 1641 East Joppa Road. The subject property is a half (0.5) acre parcel at the southwest corner of East Joppa Road and Loch Raven Boulevard. It was most recently operating as a First Mariner Bank until it was acquired by Howard Bank on February 28, 2018. The building was idle until Petitioner/Appellee¹ acquired the property. Petitioner proposes to raze the building to construct and operate a Valvoline Instant Oil Change facility.

The Board conducted a *de novo* hearing over the course of three days, March 5, April 2 and June 27, 2019, and deliberated this matter on August 27, 2019. Petitioner (hereinafter referred to as “Valvoline”) was represented by Dino C. La Fiandra, Esquire. Peter Max Zimmerman, People’s Counsel for Baltimore County, participated in the hearing. Michael R. McCann, Esquire represented Protestants, the Ridgely Manor Community Association, Knettishall Community

¹ The Petitions were originally filed by Mid-Atlantic Lubes, LLC, as Contract Purchaser, and Howard Bank as Legal Owner. This property has since been acquired by M and S Limited Partnership (Pet. Ex. 17.)

Association, Inc., Towson Communities Alliance, Associates of Loch Raven Village, and Peter M. Moulder, individually (collectively referred to as "Protestants"), throughout the hearing.

BACKGROUND

There is a long and varied history relating to the issues in this case. On November 16, 1998, the County Council of Baltimore County designated the official Loch Raven Commercial Revitalization District of Baltimore County pursuant to the recognition of revitalization districts in the Baltimore County Master Plan 1989-2000. Geographic boundaries were set forth. (People's Counsel's Exhibit 4).

On January 25, 1999, the Baltimore County Department of Planning issued inter-office correspondence recommending approval of the variance request of 1641 Joppa Road for the First Mariner Bank with the condition that final building elevations and a final landscape plan be submitted to their office for review and approval. (Protestant's Exhibit 2.) Also on January 25, 1999, the Loch Raven Community Council, Inc. (representing seventeen (17) community associations and three (3) service organizations in the Greater Loch Raven area) issued a letter to the Baltimore County Zoning Commissioner in "enthusiastic support" of the proposed development of a First Mariner Bank at the site of the subject property on the southwest corner of East Joppa Road and Loch Raven Boulevard. The letter noted the site "serves as a gateway into the Loch Raven community". (People's Counsel's Exhibit 6).

On February 9, 1999, a Petition for Variance for 1641 E. Joppa Road (Case No. 99-251-A) was granted to approve setbacks (front yard and side yard), permit a drive-through lane, and approve a modified parking plan. The petition was filed by the Estate of Sol Goldman, the current owner, and First Mariner Bank, the purchaser of the property. (People's Counsel's Exhibits 5 & 8).

On November 1, 2004, the County Council of Baltimore County expanded the Loch Raven

Commercial Revitalization District, and noted the Commercial Revitalization Districts (CRD) provide incentives to property owners and businesses in the Districts to improve the exterior of existing buildings and to develop and redevelop underused properties.

On May 15, 2006, the County Council of Baltimore County expanded the boundaries of the Loch Raven Commercial Revitalization District to include part of the commercial area along Joppa Road that was not included in the original CRD designations.

On February 19, 2013, County Council of Baltimore County revised the boundaries of the Loch Raven CRD. The resolution stated:

“the County’s commercial revitalization districts and their surrounding communities are inseparably linked, with the districts providing a range of retail, service, and entertainment uses for the local community, as well as establishing the overall image of a community; and

WHEREAS, the County’s Commercial Revitalization Program was transferred to the Department of Planning in May, 2011 to more holistically address the issues of community development and neighborhood improvement; and

WHEREAS, to effectively reposition the County’s older downtowns and to target resources more efficiently, the Department re-evaluated some of the revitalization districts in terms of their zoning classification, mix of uses, ownership, need for building improvements, projects completed and potential for reinvestment; and

WHEREAS, as a result of this evaluation, the geographic boundaries of the existing Loch Raven Commercial Revitalization District are proposed for change in order to highlight the unique characteristics and identities of three separate communities that comprise the District, namely, the Loch Raven – Baynesville area, the Loch Raven – Satyr Hill area, and the Loch Raven- Hillendale area; and

WHEREAS, it is the further intention to require that a nonresidential development plan for a proposed development located in either the Loch Raven – Baynesville area or the Loch Raven - Hillendale area of the District be subject to review by the Baltimore County Design Review Panel...”

On April 18, 2016, the County Council of Baltimore County expanded the Loch Raven Commercial Revitalization District to add a contiguous property.

On February 28, 2018, Howard Bank closed on its acquisition of First Mariner Bank. At some point thereafter, Howard Bank elected to close its branch on the subject property.

After sitting idle for over one year, Valvoline conditionally acquired the property and

proposes to construct and operate a Valvoline Instant Oil Change facility.

On August 31, 2018, a Petition for Zoning Hearing for the property located at 1641 Joppa Road was filed requesting a Special Hearing under Section 500.7 of the BCZR to determine whether or not the Administrative Law Judge should approve an amendment to the previously approved zoning site plan in case number 99-251-A, and a Special Exception to use the herein described property for a service garage pursuant to BCZR §230.3.

On October 30, 2018, the Design Review Panel (DRP) held a meeting and made recommendations based on that meeting.

On November 5, 2018, the site plan was revised per DRP recommendations.

On November 5, 2018, the Administrative Law Judge (ALJ) held a hearing.

On November 8, 2018, the Department of Planning issued a memorandum approving the DRP#606 for the property located at 1641 East Joppa Road, with conditions.

On November 15, 2018, ALJ's Opinion and Order was issued wherein the requested Special Hearing to approve an amendment to a site plan previously approved in Case 99-251-A, and the requested Petition for Special Exception, pursuant to BCZR §230.3, to permit an automotive service garage in a Business Local (BL) zone were granted with conditions.

On November 21, 2018, the Department of Permits, Approval and Inspections (PAI) issued a letter advising the recommendation for the DRP was accepted and approved for DRP#606, 1641 East Joppa Road, Valvoline Oil project.

On December 13, 2018, a timely appeal was filed by Protestants to this Board.

The Board conducted a *de novo* hearing over three (3) days.

Testimony was received from Petitioner's expert Joshua Sharon, who was accepted as an expert in the fields of civil engineering, zoning and development in Baltimore County. Mr. Sharon

testified the Redlined Site Plan provided by Petitioner meets the definition of a service garage under the Baltimore County Zoning Regulations.

Randolph Kazazian, Valvoline's Vice President of Real Estate, testified regarding the company's operations, other facilities, environmental features, and estimated the current location would serve approximately sixty (60) to eighty (80) vehicles per day with a capacity to service sixteen (16) vehicles per hour in the four (4) bays.

An expert in traffic engineering and transportation planning, Kenneth W. Schmid, testified the signalized intersection at Loch Raven Boulevard and East Joppa Road is rated a "D" Level of Service, which is an acceptable Level of Service to permit the redevelopment of the subject property. Mr. Schmid indicated that the State Highway Administration looked favorably on one of the curb cuts on Loch Raven Boulevard. The estimated trip generation is approximately one hundred sixty (160) average daily trips and that cars traveling north on Loch Raven Boulevard would make a "protected" U-turn at the intersection of Joppa Road, which is a legal maneuver to gain access to the property via the southbound lanes of Loch Raven Boulevard.

Protestants presented testimony from Peter Moulder, representative of Associates of Loch Raven Village, and Paul Hartman, representative of Towson Communities Alliance, regarding their concerns with the over-saturation of the area with businesses providing automotive services. They also argued that the proposed use is not in line with the Loch Raven-Baynesville Commercial Revitalization District which calls for a diversity of uses and adding another auto-related business does not further the goals of the CRD.

People's Counsel presented Jason Bulkeley, the owner of a nearby restaurant, who objected to another auto-related business in the area.

A local resident, John Fiastro, Jr., testified that he supported the Valvoline project.

DISCUSSION

The Petition for Special Hearing was requested pursuant to § 500.7 of the BCZR to approve an amendment to a site plan previously approved in Case 99-251-A. Section 500.7 provides as follows:

§ 500.7. - Petitions for public hearing; notice.

The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided.

The granting of the Special Hearing in this case is contingent upon the Board's finding as to the Petitioner's request for a Special Exception. The threshold issue in this matter is whether there was sufficient evidence to deny the Special Exception. A Special Exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use. *Schultz v. Pritts*, 291 Md. 1 (1981) and *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017). In the view of the majority of the Board, the evidence submitted fails to satisfy the § 502.1 requirements, which read as follows:

§ 502.1. - Conditions determining granting of special exception.

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air;
- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;

- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
- I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C. 2, R.C. 4, R.C. 5 or R.C. 7 Zone, and for consideration of a solar facility use under Article 4F, the inclusion of the R.C. 3, R.C. 6, and R.C. 8 Zones.

In particular, the adverse impacts on the general welfare of the locality involved (502.1(A)) and the tendency to create congestion in roads and streets (502.1(B)) overcome the presumption that a Special Exception is in the general interest of the jurisdiction and therefore valid. The Protestants' concerns taken from the available evidence rebut the presumption of validity of the Special Exception in the current matter. This Board provided special consideration to each proposal and found the special exception requested is detrimental to the health, safety, or general welfare of the public and will tend to cause traffic congestion.

BCZR §502.1(A)

Section 32-4-102(a)(1) of the Baltimore County Code (BCC) indicates that conformity with the Master Plan is required and “[s]ubject to the limitations in the Charter and this Code, all development of land shall conform to The Master Plan”. The Master Plan lays out the policy groundwork for achieving long-term success in Baltimore County. The policy regarding the Commercial Revitalization Districts (CRD) is to “[r]etain and attract quality retail, office, service, residential, entertainment, and institutional uses that create well balanced and economically vital mixed-use.” It notes:

[t]o remain viable, the CRDs must differentiate themselves by capitalizing upon their downtown development patterns, strengthening the existing base for small businesses, and attracting new and different uses. Each district is unique with its own set of attributes and liabilities and revitalizations efforts must be tailored to address these differences... Attaining a sufficient and balanced mix of quality uses is an important goal that should be accompanied with creating a safe, attractive, and walkable environment. (Protestants' Exhibit 4 - page 139)

It is clear from the legislative history that the County Council has continued to expand the

Loch Raven Commercial Revitalization District. As such, the CRD should be taken into account when considering the health, safety or general welfare analysis of the specific community. Although the goal is to develop and redevelop underused properties, it is clear the current project is inconsistent with the CRD due to the inordinate number of automotive service businesses providing oil changes within a quarter (¼) mile of the subject property. In addition to the lack of diversity, the addition of Valvoline to the Loch Raven community would increase traffic and would jeopardize the neighborhood's safety and walkability. Although some argue that the CRD has not been complied with in the past, it does not negate the fact that the CRD should be considered in a special exemption analysis. The failure to comply with the CRD is a contributing factor to the denial in the current case.

BCZR §502.1(B)

According to the Basic Services Map Transportation Zones, the subject intersection of Loch Raven Boulevard and Joppa Road had an F level-of-service for traffic in 2016, D in 2017 and D in 2018. (Petitioner's Exhibit 13). In Baltimore County, the level-of-service can regulate the issuance of building permits for non-industrial development in urban areas determined to have a significant influence on a particular intersection. Level-of-Service D intersections do not control issuance of building permits, but these areas are identified on the Basic Services Maps Transportation Zones to identify the deficient intersections. The purpose of identifying D intersections is to provide notice to the public that the intersection has the potential of going to an E or F. Areas around a level-of-service F intersection would have a moratorium on building permits for non-industrial development, with some very limited exceptions. Identifying these intersections also allows the County an opportunity to work toward correcting them and lessen congestion *before* it becomes a serious problem (emphasis added). (Protestants' Exhibit 9).

The Board heard testimony from Petitioner's witnesses that they anticipate sixty (60) to eighty (80) vehicles per day (but will have the capability to service one-hundred sixty (160) per day). The location is ideal to receive customers from Interstate 695 (a very busy beltway), but a U-turn will be necessary for customers to enter the property if they are northbound on Loch Raven Boulevard. The negative impact of additional traffic (including additional U-turn traffic) for the intersection as well as resulting health and safety concerns warrants a denial of the requested relief in this case.

DECISION

This Board finds the facts and circumstances showing the adverse impacts of the use at the particular location in question would be beyond those inherently associated with the Special Exception use. The Petitioner did not persuade the Board by a preponderance of the evidence that the special exception will conform to all applicable requirements. *Attar v. DMS Tollgate, LLC*, at 285-6.

ORDER

THEREFORE, IT IS THIS 23rd day of April, 2020, by
the Board of Appeals of Baltimore County,

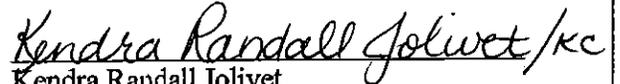
ORDERED that Petitioner's request for Special Hearing to approve an amendment to a site plan previously approved in 99-251-A is hereby DENIED; and it is further

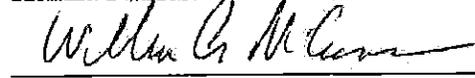
ORDERED that Petitioner's request for Special Exception to permit an automotive service garage in a BL zone is hereby DENIED.

In the Matter of: M and S Limited Partnership (formerly Howard Bank)
Case No: 19-070-SPHX

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Kendra Randall Jolivet


William A. McComas

IN THE MATTER OF M AND S LIMITED
PARTNERSHIP LEGAL OWNERS AND
PETITIONERS FOR SPECIAL HEARING AND
SPECIAL EXCEPTION FOR THE PROPERTY
LOCATED AT 1641 JOPPA ROAD
(FORMERLY KNOWN AS HOWARD BANK)
9TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO.: 19-070-SPHX

* * * * *

DISSENT

This matter relates to an application for a special exception to replace a vacant Howard Bank building on the southwest corner of Joppa Road and Loch Raven Boulevard with a Valvoline automobile lubrication outlet. The matter was first heard by an Administrative Law Judge who ruled in favor of Valvoline. This *de novo* appeal followed.

I must say that I find it peculiar to be a writing a dissent where I agree with the prevailing party on 99% of the operative principles. It is the application of those principles to these circumstances where we part company. For example, I whole-heartedly adopt the section in People's Counsel post-hearing Memorandum as to the nature and operation of the so-called "presumption" in favor of special exceptions. Beyond the recognition that special exception **uses** have been legislatively pre-determined to be proper, under certain circumstances, within the zoning classification in question – and hence are distinct from variances which involve uses not legislatively pre-approved -- there is absolutely nothing that eases the burden of persuasion as to the criteria in BCZR § 502, *et seq.* It is the applicant's obligation to present convincing evidence as to each aspect of the BCZR special exception requirements and to establish by a preponderance of the evidence that the special exception use is warranted in that particular location. There is no burden shifting to the protestants. Everyone knows and agrees that if the applicant filed its petition, showed that the sought-after use was permitted by special exception, and then rested, the applicant would lose because the

applicant had failed to prove that the statutory criteria had been met. If there were some sort of meaningful evidentiary “presumption” in favor of the special exception, then the special exception would be granted based on that minimalist showing unless the protestants could affirmatively demonstrate that the BCZR criteria were **not** satisfied. The so-called presumption means only that the petitioner does not need to show that the special exception will benefit the area. Nonetheless, the applicant is still required to show that the proposed use will not be detrimental. *See generally Montgomery County v. Butler Landscape Design*, 417 Md. 271, 301-08 (2010). Judge Murphy’s concurrence in *People’s Counsel vs. Loyola College*, 406 Md. 107 (2008) (Murphy, J., concurring) is the most succinct explanation of how the Baltimore County special exception process fits into the law’s fairly grand jurisprudence regarding presumptions. *Id.* at p. 109.

Though not a legal conclusion necessary to the decision in this matter, I also whole-heartedly agree with the sentiment in People’s Counsel’s Memorandum regarding the deference and respect that local residents and community groups deserve, but too often do not receive, when the impact of proposed special exceptions on their communities is being assessed. The most common method of discounting community views is through the use of self-styled “expert” testimony. Expert testimony is and can be quite useful. At the same time, in certain respects, the day-to-day experience of people who live in an area can be just as probative and should receive the same kind of official recognition that outside “experts” receive solely by reason of their designation. Sometimes expert testimony is needed on particular issues. Traffic engineering is an example of a discipline that often requires specialized training coupled with collection and analysis of data. On the other hand, people who live or work in an area know when traffic snarls and what kind of informal detours to which commuters resort. The balance between the traffic engineer’s view and the local citizen’s view obviously varies from situation to situation, but typically, both views deserve to be heard. Where the issue involves

nothing more than common sense or practical experience, the expert brings nothing extra to the discussion.

It is also the case that oftentimes the witnesses who are called as experts are deemed to be experts less by reason of special training with the issue or familiarity with the impacted area, and more by reason of longevity and familiarity to the Board. An engineer or surveyor has no real expertise about the relationship between his or her client's project and the general health, safety, and welfare of the public, which is the ultimate issue that the factfinder must decide. It is not as though the typical expert witnesses have special academic credentials that matter or are current. Further, their motives are often financial, and they lack authentic appreciation (or even any actual concern) for the real impact that a proposal may have on the area. To be even more blunt, many of these experts say whatever a party needs them to say to create a record to justify a given project; they do not care in the slightest what happens to the community in question as a result of the project.¹ Such witnesses do not need to live with the consequences of their testimony. Their testimony is little more than some type of talismanic ritual. Many of the "experts" that are called before this Board are the same ones over and over again. Some of them seem to believe that they, counsel for the parties, and the Board are one big happy family. Their demeanor on the stand at times reflects a wholly inappropriate coziness. It is useful to be reminded that the Board is independent from applicants, protestants, witnesses, counsel for any party, and indeed, the County planning apparatus itself.

I also agree with the principle that the Master Plan, commercial revitalization districts (CRD), special development designations, and similar legislative dictates deserve vastly more weight than has come to be the practice over the past two decades. Too often those very important planning directives have been given, at best, passing attention. They are often referred to as being

¹ I want to make it abundantly clear that I am here expressing a general observation. This sentiment, however, does not apply to any expert called as a witness in this specific case.

“aspirational”, a term that has now come to be a pejorative -- used when dismissing Master Plan concerns while adopting a disingenuous pose of high regard for the Master Plan. It is damnation by faint praise. More to the point, the legitimacy of the Master Plan and its many subparts and satellites is undermined by consigning them to some lofty region of unrealistic planning idealism. The Master Plan can then be safely and easily ignored. In that world, there is no reason to permit a well-conceived long-term county-wide design assembled by professional planners with substantial collaboration from the County Council to get in the way of a profitable deal. The practical result of this disregard for over-arching development principles, to cite just two examples, is the impending transformation of an officially identified rural village on a designated scenic byway into a truck stop in complete derogation of the Master Plan, and the use of faux expert testimony to justify rescuing a speculator’s languishing commercial property by developing it into an isolated (and probably low income) apartment building bounded in part by limited access roadways and otherwise marooned in a commercial and industrial park which the County and the Master Plan had long promised would remain commercial and industrial.

So, having said all of the above, the question then becomes: how can one who holds those views dissent in this case? The Valvoline project is arguably inconsistent with the Master Plan’s CRD designation. I have tried, and I think successfully, to convey the notion that the Master Plan deserves substantially more influence than it has been receiving. This is not to say, however, that the Master Plan is sacred or that it can ruff² common sense. The CRD is important, but similarly, it is not sacred, and it must also yield to common sense. And simply because one believes, as do I, that the Master Plan has been treated disrespectfully over the past fifteen to twenty years, does not require a reflexive

² In the game of Bridge, winning a trick with a trump card is referred to as a “ruff”. It can also be used as a verb in the sense of “ruffing a trick”.

decision in its favor as to an intersection that was long ago irreparably and irretrievably compromised. The Master Plan, though centrally important, is not mandatory.³ To elevate the Master Plan over what the naked eye sees does not right the balance nor address historic Master Plan under-valuation. For the most part, development ought to occur where development has occurred. To insist on blind compliance with the Master Plan for the intersection of Loch Raven and Joppa is not simply shutting the barn door after the horse has left. It is the horse leaving, shutting the barn door, and then burning down the barn.

There was some argument that the Valvoline facility would exacerbate the already congested traffic situation. Even if one were to rely only on citizen opinion about traffic impact, it was difficult to see any change, whether great or modest, to an already dense traffic situation. I suspect that the citizen testimony on traffic was more out of frustration with the already congested traffic at that intersection and its environs and less on the extent to which Valvoline would contribute to that congestion. Of course, Valvoline will have customers. But the only calculation that matters is whether Valvoline would generate appreciably more traffic than did Howard Bank or some other future hypothetical business such that it would have an unpermitted adverse impact or constitute a detriment under BCZR § 502.1. On that score, I see no reason in logic nor basis in the record to

³ The Baltimore County Charter recites that the Master Plan is “. . .to serve as a guide”. Baltimore County Charter, § 523(a). The Baltimore County Code also indicates that the “. . . Master Plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the county and its environs. . .” Baltimore County Code, § 32-2-202(a). The case law has consistently held that master plans are not mandatory, often relying on the precise type of authorizing language contained in county charters and statutes that is found in the Baltimore County Charter and Code as quoted above. See e.g. *People's Counsel of Baltimore County v. Webster*, 69 Md. App. 694, 701-03 (1986). Cf. *People's Counsel of Baltimore County v. Beachwood Ltd. Partnership*, 107 Md. App. 627, 656-58 (1995) (Master Plans are “guides” and there is no requirement that comprehensive zoning maps or any amendments thereof conform to a jurisdiction’s master plan.). If all of this were not enough, the Master Plan 2020 itself states in its Introduction at p. 1 that “. . .generally the policies and action stated in *Master Plan 2020* are not mandatory. . .”.

attribute some Draconian traffic consequence, or even a more modest adverse impact, to Valvoline. *Montgomery County v. Butler, supra*, 417 Md. at 307.

To a great extent, the opposition citizen testimony was candidly oriented towards aesthetics, which, as with the other issues already discussed, I also endorse as a significant and important consideration in the Master Plan and in the ongoing development of areas in which to work and live. To the extent possible, there are any number of good and sound reasons why the spaces we utilize for working and living should be pleasing to, and supportive of, our overall human sensibilities. The value of aesthetics is embedded in the Master Plan and all CRDs. *See e.g. Master Plan 2020* at p. 99-102. The problem, however, is that aesthetics invariably has large subjective components. Mr. Moulder, speaking on behalf of the community, thought that the new Starbucks replacing the shopworn Bel-Loc Diner was a great improvement. Personally, I view Starbucks as a commercial ubiquity similar to McDonald's, bringing only familiarity in appearance but long past the time where it can be suggested that it adds any character or style. A refurbished Bel-Loc would have been wonderful as a "gateway" to the community.⁴ I wish the community had insisted on that development alternative, or something similar, in lieu of welcoming Starbucks. To me, a Starbucks does not enhance the appearance in the slightest. This reasonable difference in view is why aesthetics, as important as it is, can be problematic. And while focused on Starbucks, one should not forget the incredible traffic it generates during the morning rush hour.

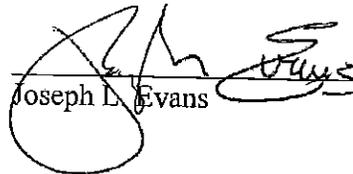
⁴ The Protestants repeatedly referred to this intersection as a "gateway". It hearkened back to 1999 when the then Deputy Zoning Commissioner, with no opposition, not surprisingly granted a variance to permit First Mariner Bank to build the building that is now the vacant Howard Bank building. In that friendly litigation, the Deputy Zoning Commissioner referred to this intersection as the "gateway to the Loch Raven communities". *See Findings of Fact and Conclusions of Law*, Case No. 99-251-A, at p. 2. Any validity that those kind (and now rather nostalgic) words may have had in 1999 has surely dissipated in the intervening 20 years as development in that area has raged on unabated. Even more, I am confident that the now departed but iconic Bel-Loc was the defining feature that made the gateway a gateway.

It is my view that the Valvoline facility is better in appearance than anything already at that intersection or within close proximity of it. It certainly is no worse. Being newly built would make it an improvement over a number of its older neighbors. In short order, it would have become largely invisible even to its present opponents. That intersection is already composed of sketchy motels, a furniture store, automotive repair facilities, various shabby retail outlets, and, of course, a Starbucks.

CONCLUSION

A stable multi-State business enterprise is looking to invest millions to refurbish a vacant building at one of Baltimore County's busiest commercial intersections. To invoke the Master Plan to prevent this development is an empty gesture and has only the possible ironic effect of diminishing the Master Plan. It is my opinion that the applicant easily carried its burden of proof, without the assistance of any presumption, and established its entitlement to the special exception. Accordingly, I dissent.

April 23, 2020
Date


Joseph L. Evans